IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16337 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHANDUJI BAKORJI - Petitioner(s)

Versus

NARANBHAI KACHARABHAI PRAJAPA-TI - Respondent(s)

==========

Appearance :

MS TRUSHA K PATEL for Petitioner(s) : 1,
MR SHITAL R PATEL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 07/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. Shital Patel learned advocate waives service of rule on behalf of respondent. With the consent of both the parties, this matter is heard finally today.

2. This is a petition essentially under Article 227 of the Constitution of India, challenging common order passed by the Ld. Judge, Ahmedabad (Rural) Navrangpura below application Ex. 39 and Ex. 50 dated 24.9.2004 in LAQ Case No. 309/2004 (It is stated that the correct number is 309/1994). By the said order, the ld. Judge has directed that till the Special Civil Suit No. 87/1999 which pending in the Court of Civil Judge (SD), at Gandhinagar, is finally decided, the amount of Rs. 21,81,459/- deposited in the office of the Nazir should not be disbursed amongst the parties to the proceedings. It is further directed that the Nazir should deposit the said amount by way of Fixed Deposit for a period of one year with any Nationalised Bank.

3. It is the say of the petitioner that his land bearing Lot No. 747 admeasuring 2 acres and 21 gunthas (7904 sq. mtrs.) was acquired for a public purpose namely construction of road under the provisions of Land Acquisition Act (hereinafter referred to as “the Act”). Notification under sec. 4 of the Act was issued on 2.1.1986 and the declaration under sec. 6 was made on 17.1.1987. It is the say of the petitioner that at the end of acquisition proceedings award was made on 20.9.1988. It is, however, stated by the petitioner that the respondent raised an objection under sec. 30 claiming apportionment of the amount of compensation awarded under sec. 11 of the Act and in view of the same, the Collector referred the dispute to

the decision of the court. The said reference was numbered as LAQ No. 896/1988. In the said proceedings, there was a settlement between the petitioner and respondent and on the basis of the consent terms, the ld. Judge made award on 6.2.1991. By virtue of the consent terms, from the total amount of compensation paid under sec. 11 of the Act by the Special Land Acquisition Officer, amount of Rs. 80451/- was given to respondent, whereas, the petitioner received Rs. 54000/-. According to the petitioner, the aforesaid objection was raised by the respondent on the basis of the alleged sale-deed which took place between the parties in respect of the land in question in the year 1989.

4. However, subsequently, the petitioner submitted an application under sec. 18 of the Act seeking enhancement of the rate of compensation awarded by the Special Land Acquisition Officer. The said application ultimately resulted into LAQ No. 309/1994 and it was placed before the ld. 3rd Extra Assistant Judge, Ahmedabad (Rural), who at the end of the proceedings, made award dated 15.9.1998. The amount of compensation determined by the Special Land Acquisition Officer was enhanced by the Ld. Trial Judge.

5. It is the case of the petitioner that the respondent in December, 1999, that is, at a belated stage, filed a suit being Special Civil Suit No. 87/1999 for restraining the petitioner from recovering the amount for which the award was made by the Reference Court. The respondent also filed

application at ex. 5 seeking interim relief, but according to petitioner, on account of repeated adjournments sought by the respondent, it is now, ordered to be heard along with the suit. In view of the same, the petitioner submitted an application ex. 39 on 2.5.2000 for withdrawal of the amount. The said application was objected to by the respondent. Another application was filed by the petitioner at ex. 50 for the same purpose which was also objected to by the respondent. Ultimately, the impugned order came to be passed disposing of both the applications ex. 39 and ex. 50 on 24.9.2004, which is under challenge before us in this petition.

6. We have heard Ms. Trusha Patel ld. Advocate for the petitioner and Mr. Shital Patel ld. Advocate for the respondents. It is submitted by Ms. Patel that though the respondent had received adequate compensation and he had not chosen to make any application under sec. 18 of the Act, the learned Judge has committed an error in passing the order, directing the Nazir not to make the payment to the petitioner. In her submission, the respondent has no justifiable reason to object to the payment being made to the petitioner. She has further submitted that when the respondent has slept over his right, he cannot now be permitted to raise the objection to the payment to be made to the petitioner of the enhanced amount. She has also submitted that the respondent is not legally entitled to receive any amount from the additional compensation that has been determined by the reference court in favour of the petitioner. Since earlier, on the basis of the award

made by consent of parties, the respondent has received Rs. 80, 451/-.

7. Mr. Shital Patel ld. Advocate for the respondent has submitted that by virtue of the document of sale dated 6.12.1989 the respondent is the only person entitled to receive the amount for the land. According to him, it is also one of the terms that has been incorporated in the sale-deed. It is his say that after execution of the sale-deed, the petitioner has no right or interest in the said land. He has, therefore, submitted that the present petition be dismissed.

8. We have perused the record of the petition. We have also carefully considered the rival contentions of both the parties. It clearly appears to us that the additional amount of compensation has been determined by the concerned reference court in the proceedings which were filed by the petitioner. The respondent was not a party to the said reference case. It also appears that so far as the respondent is concerned, there is no reference case arising under sec. 18 of the Act though it is the say of the respondent that application under sec. 18 was made to the Collector but the same was not forwarded by way of reference to the concerned reference court. Be that as it may. For the present, it clearly appears that the amount of compensation which is ordered to be kept as Fixed Deposit by the Ld. Judge by impugned oder below ex. 39 and ex. 50 is awarded in the reference case that was preferred by the petitioner. It is, therefore, as good as money decree passed in favour of the petitioner. All the disputes which are raised by the

respondent are based on facts. In other words, the contentions which have been raised by Mr. Patel before us are all disputed questions of fact which can adequately be decided by the trial court in the suit pending before it after appreciating the evidence that may be adduced by the parties during the course of hearing. For the present, we may only say that this court while exercising the jurisdiction under Article 227 of the Constitution of India, cannot appreciate the contentions of the respondents which are purely made on disputed facts. At the same time, the court also cannot shut eyes to the facts that the additional compensation that was awarded by the reference court was in the proceedings filed by the petitioner. The petitioner, therefore, cannot be deprived of the enjoyment of the said amount.. However, when the proceedings are pending before the ld. Civil Judge (SD) at Gandhinagar in respect of this very amount, it is necessary to safe-guard the interest of the present respondent who is plaintiff in that suit also. The ends of justice would meet if the petitioner is permitted to withdraw the said amount by furnishing adequate security to the satisfaction of the trial court after hearing both the parties.

9. In the result, this petition is allowed. The order passed by the Ld. Judge, Ahmedabad (Rural) at Navrangpura, dated 24.9.2004 below Ex. 39 & 50 in LAQ Case No. 309/2004 (1994) is quashed and set aside. It is now directed that upon the petitioner furnishing security to the satisfaction of the court, he may be permitted to withdraw the amount which is deposited in

the Registry of the Court. It is also made clear that at the time of deciding the question of security, the ld. Judge will grant hearing to both, the petitioner as well as to respondent. Rule is made absolute. No order as to costs.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

mandora/